

*See attached n/w* *(25/pm)*  
*1/15/02*

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

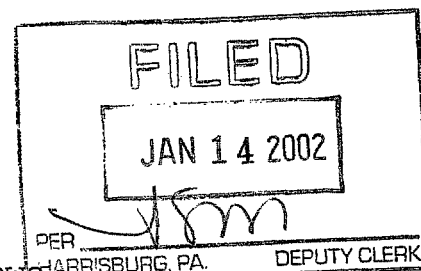
WAYNE A. NOEL,  
Plaintiff

vs.

COMMONWEALTH OF PENNSYLVANIA,  
et al.,  
Defendants

CIVIL ACTION NO. 1:CV-01-1049

O R D E R



THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Pro se Plaintiff Wayne A. Noel has filed this civil rights action under 42 U.S.C. § 1983. Before us are two motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), one filed by the Conewago Police Department and police officer William Hartlaub, and the other by the Adams County Court of Common Pleas, its President Judge Oscar F. Spicer, and Judge John D. Kuhn. Plaintiff has not opposed the motions.

In his complaint, Plaintiff alleges violations stemming from two incidents. First, he claims he received an unfair trial in 1999 when he faced a charge of driving under the influence. He claims that officer Hartlaub did not investigate the true cause of the accident and did not read him his rights.

Second, Plaintiff alleges he was wrongfully arrested on December 5, 2000, for an escape. He had been granted a 60-day

medical furlough from October 6, 2000 to December 5, 2000. He contends that his 60-day leave began to run on October 7th, the day he was released, and that he was not required to return until the sixth of December.

Plaintiff was convicted in state court on both charges and served a prison term for each. He has since been released from prison.

Because President Judge Spicer and Judge Kuhn are protected by absolute immunity in their official actions, we will dismiss them from this case. Stump v. Sparkman, 435 U.S. 349, 356, 98 S. Ct. 1099, 1104, 55 L.Ed.2d 331, 338-39 (1978). Immunity attaches whether a judge has acted in error, maliciously, or unfairly. Gallas v. Supreme Court of Pennsylvania, 211 F.3d 760, 769 (3d Cir. 2000) (quoting Stump, 435 U.S. at 356-57, 98 S. Ct. at 1105, 55 L.Ed.2d at 338-39) (other citations omitted).

We will also dismiss the Adams County Court of Common Pleas because it is a judicial branch of Pennsylvania government and as a state entity it is not a "person" for purposes of section 1983. See Callahan v. City of Philadelphia, 207 F.3d 668 (3d Cir. 2000).

Although it appears that the Commonwealth of Pennsylvania, named as an additional defendant in this case, has not been served with the complaint, we will also dismiss it from this case. The Commonwealth of Pennsylvania arguably has two bases for dismissal. First, it, too, is not a "person" under

section 1983. Will v. Michigan Dep't of State Police, 491 U.S. 58, 71, 109 S. Ct. 2304, 2312, 105 L.Ed.2d 45, 58 (1989). Second, the Eleventh Amendment bars jurisdiction over a section 1983 action against a state. See Callahan, 207 F.3d at 669-70.

As noted, Plaintiff has failed to respond to the motion to dismiss filed by the remaining defendants, the Conewago Police Department and officer William Hartlaub, even after we granted him leave to do so. See Order, dated December 12, 2001. Pursuant to our local rules, when a Plaintiff fails to respond to a defendant's motion, the Plaintiff is deemed to not oppose the relief sought in that motion. Local Rule 7.6, Rules of Court, M.D. Pa.

Normally, the rules foreclose a response by Plaintiff. However, given his pro se status and the fact that he has indicated that he wishes to proceed with this action, we will afford him an additional ten days from the date of this Order to file an appropriate response to the pending motion of Hartlaub and the Conewago Police Department. If Plaintiff fails to do so, this action will be dismissed. See Stackhouse v. Mazurkiewicz, 951 F.2d 29, 30 (3d Cir. 1991).

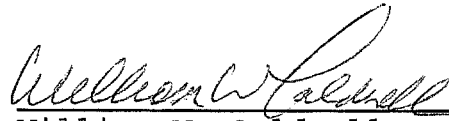
Accordingly, this 14th day of January, 2001, it is ordered that:

1. Judge Oscar F. Spicer, Judge John D. Kuhn, and Adams County Court of Common Pleas' motion to dismiss, filed October 10, 2001, (Doc. No. 15), is granted.

2. The Commonwealth of Pennsylvania is dismissed as a party in this case.

3. Plaintiff Wayne A. Noel shall have 10 days from the date of this Order to file opposition to defendants Conewago Police Department and William Hartlaub's motion to dismiss, filed September 17, 2001.

4. If Plaintiff fails to comply with paragraph 3, this action will be dismissed.

A handwritten signature in cursive script, appearing to read "William W. Caldwell", is written over a horizontal line.

William W. Caldwell  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

\* \* MAILING CERTIFICATE OF CLERK \* \*

January 14, 2002

Re: 1:01-cv-01049 Noel v. Comm. of PA.

True and correct copies of the attached were mailed by the clerk to the following:

Wayne A. Noel  
4 North Queen Street  
Apt. 8  
Littlestown, PA 17340

Mary E. Butler, Esq.  
Administrative Office of PA Courts  
1515 Market Street, Suite 1414  
Philadelphia, PA 19102

Clayton R. Wilcox, Esq.  
Wilcox and James  
234 Baltimore St  
Gettysburg, PA 17325

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

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Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

7000 0520 0023 0164 9245

Recipient's Name (Please Print Clearly) (To be completed by mailer)  
Wayne A. Noel  
Street, Apt. No. or PO Box No.  
4 N. Queen St. Apt. 8  
City, State, ZIP+4  
Littlestown, PA 17340

PS Form 3800, February 2000 See Reverse for Instructions

( ) INS  
( ) Jury Clerk

cc:

Judge ( )

Magistrate Judge ( )

U.S. Marshal ( )

Probation ( )

U.S. Attorney ( )

Atty. for Deft. ( )

Defendant ( )

Warden ( )

Bureau of Prisons ( )

Ct Reporter ( )

Ctroom Deputy ( )

Orig-Security ( )

Federal Public Defender ( )

Summons Issued ( )

Standard Order 93-5 ( )

Order to Show Cause ( )

Bankruptcy Court ( )

Other ( )

with N/C attached to complt. and served by:  
U.S. Marshal ( ) Pltf's Attorney ( )

with Petition attached & mailed certified mail  
to: US Atty Gen ( ) PA Atty Gen ( )  
DA of County ( ) Respondents ( )

MARY E. D'ANDREA, Clerk

DATE: 1/14/02

BY: Asm  
Deputy Clerk